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Filing date: **02/10/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054201
Party	Defendant Sleep Innovations, Inc.
Correspondence Address	ROBERT W SMITH MCCARTER & ENGLISH LLP FOUR GATEWAY CENTER, 100 MULBERRY STREET NEWARK, NJ 07102 UNITED STATES rsmith@mccarter.com, ihurtado@mccarter.com, dpopovic@mccarter.com
Submission	Motion to Extend
Filer's Name	Robert W. Smith
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Signature	/robertwsmith/
Date	02/10/2012
Attachments	Registrant Sleep Innovations, Inc.'s Motion for Extension of Discovery and Trial Dates.pdf (3 pages)(54823 bytes) Declaration of Irene M. Hurtado.pdf (3 pages)(92319 bytes) Letter Brief in Support of Motion for Extension of Discovery and Trial Dates.pdf (3 pages)(124896 bytes)

In the Matter of Registration No. 3,916,902
For the Mark: BODIPEDIC (& Design)
Registration Date: February 8, 2011

Cancellation No. 92054201

REGISTRANT SLEEP INNOVATIONS, INC.'S MOTION FOR EXTENSION OF DISCOVERY AND TRIAL DATES

v.

AND TRIAL DATES

Registrant.

Expert Disclosure Due:	04/11/2012
Discovery Closes:	05/11/2012
Petitioner's Pretrial Disclosures:	06/25/2012
Petitioner's 30-day Trial Period Ends:	08/09/2012
Registrant's Pretrial Disclosures:	08/24/2012
Registrant's 30-day Trial Period Ends:	10/08/2012
Petitioner's Rebuttal Disclosures:	10/23/2012
Petitioner's 15-day Rebuttal Period Ends:	11/22/2012

ME1 12977182v.1

Registrant's Motion for Extension of Discovery and Trial Dates.

McCARTER & ENGLISH, LLP

By: 

Robert W. Smith
Irene M. Hurtado

Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
(973) 622-4444

Attorneys for Registrant
Sleep Innovations, Inc.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this day, I served a copy of the foregoing Registrant's MOTION FOR EXTENSION OF DISCOVERY AND TRIAL DATES on counsel for Petitioner by regular mail, as follows:

AMY SULLIVAN CAHILL
STITES & HARBISON PLLC
400 WEST MARKET STREET , SUITE 1800
LOUISVILLE, KY 40202-3352

Date: February 10, 2012

A handwritten signature in cursive script, appearing to read "Amy M. Lusted", is written over a horizontal line.

In the Matter of Registration No. 3,916,902
For the Mark: BODIPEDIC (& Design)
Registration Date: February 8, 2011

Cancellation No. 92054201

**DECLARATION OF
IRENE M. HURTADO IN SUPPORT
OF REGISTRANT SLEEP
INNOVATIONS, INC.'S MOTION
FOR EXTENSION OF DISCOVERY
AND TRIAL DATES**

y.

AND TRIAL DATES

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1. I am an attorney of the State of New Jersey and am an associate at the Firm of McCarter & English, LLP. This Declaration is submitted in support of Registrant Sleep Innovations, Inc.'s ("Registrant") Motion for Extension of Discovery and Trial Dates.

3. The parties have actively been conducting discovery in this matter, with both parties having propounded written discovery. Registrant served written responses to Petitioner's discovery requests on January 6 and 10, 2012, and has been producing documents on a rolling basis since January 6, 2012 and continues to do so.

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5. These witnesses are both employees of Registrant. Lisa Thorstenson is Registrant's Executive Vice President of Channel Marketing, and Michael Loomis is Registrant's Executive Vice President of Product Development. When we contacted Ms. Thorstenson and Mr. Loomis to determine their availability for deposition, they advised us that throughout the month of February and part of March they are both actively involved in the preparation and ultimate attendance at a significant trade show that Registrant participates in annually. This trade show is important to Registrant's business.

6. Upon learning this information, on February 7, 2012, I wrote to Petitioner's counsel advising her of the witnesses' unavailability during the requested time period and advised of their availability for depositions during the last week in March and during the month of April. Given that discovery is set to close on March 12, 2012, my correspondence requested Petitioner's consent by the close of business on February 9, 2012 to a 60 day extension of discovery and trial dates. I further advised that if we did not receive consent to the extension, we would be filing a motion with the Board.

7. Registrant promptly notified Petitioner's counsel that Registrant's witnesses were unavailable to appear for depositions due to a critical business event and advised of the witnesses' earliest availability. Registrant has not unreasonably delayed.

8. We have not received a response from Petitioner's counsel to our request for consent to an extension. As a result, we have filed the within motion seeking to extend the discovery and trial dates.

9. Registrant submits that good cause for the requested extension exists and Registrant respectfully requests that the Board grant its Motion to Extend the Discovery and Trial Dates.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: February 10, 2012


Irene M. Hurtado

February 10, 2012

VIA ELECTRONIC SUBMISSION

Assistant Commissioner for Trademarks
Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451 Alexandria, VA 22313-1451

Robert W. Smith
Partner
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Re: Dan Foam APS v. Sleep Innovations, Inc., Cancellation No. 92054201

Dear Sir or Madam:

We represent Registrant Sleep Innovations, Inc. ("SI" or "Registrant") in this matter. Please accept this letter in lieu of a more formal brief in support of Registrant's Motion for Extension of Discovery and Trial Dates.

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(a) Procedural History

On June 24, 2010, SI filed U.S. Application No. 85/070,859 with the United States Patent and Trademark Office (the "PTO") to register the mark BODIPEDIC & Design (the "Mark") in connection with mattress toppers, pillows, and mattresses in Class 20 (the "Application"). SI further states that the Application proceeded to registration on February 8, 2011, and was assigned U.S. Registration No. 3,916,902 (the "Registration").

Petitioner Dan Foam ApS ("Petitioner") filed a petition seeking cancellation of the Registration on July 1, 2011, based on a claimed likelihood of confusion between the Registration and Petitioner's TEMPUR-PEDIC & Design mark, U.S. Registration No. 3,900,919, in connection with "seating and couching mats in the nature of a pillow or seat liner, pillows, cushions, mattresses," and other goods in Classes 10 and 20.

On July 6, 2011, the Trademark Trial and Appeal Board ("Board") issued a Scheduling Order (the "Order"). Pursuant to that Order, discovery is set to close on March 12, 2012. Declaration of Irene M. Hurtado in Support of Registrant's Motion for Extension of Discovery and Trial Dates ("Hurtado Dec."), at ¶ 2. The parties have actively been conducting discovery in this matter, with both parties having propounded written discovery. Registrant served written responses to Petitioner's discovery requests on January 6 and 10, 2012, and has been producing documents on a rolling basis since January 6, 2012 and continues to do so. Id. at ¶ 3.

BOSTON

HARTFORD

NEW YORK

NEWARK

PHILADELPHIA

STAMFORD

WILMINGTON

On January 19, 2012, the Petitioner's counsel, Amy Sullivan Cahill, requested the availability of two of Registrant's potential witnesses to be produced for depositions. Hurtado Dec., ¶ 4. These witnesses are both employees of Registrant. Id. at ¶ 5. Lisa Thorstenson is Registrant's Executive Vice President of Channel Marketing, and Michael Loomis is Registrant's Executive Vice President of Product Development. Id. When contacted concerning their availability for deposition, Ms. Thorstenson and Mr. Loomis advised that during the month of February and part of March they are both actively involved in the preparation and ultimate attendance at a significant trade show that Sleep Innovations, Inc. participates in annually. Id.

Upon learning this information, on February 7, 2012, we wrote to Petitioner's counsel advising her of the witness' unavailability during the requested time period and advised of their availability for depositions during the last week in March and during the month of April. Hurtado Dec., ¶ 6. Given that discovery is set to close on March 12, 2012, our correspondence requested Petitioner's consent by the close of business on February 9, 2012 to a 60 day extension of the discovery and trial dates. Id. We further advised that if we did not receive consent to the extension that we would be filing a motion with the Board. Id. As of today, we have not received a response from Petitioner's counsel. Id. at ¶ 8.

Registrant submits that good cause for the requested extension exists and Registrant respectfully requests that the Board grant its Motion to Extend the Discovery and Trial Dates.

(b) Basis for Request for an Extension

Section 509.01 of the Trademark Trial & Appeal Board Manual of Procedure (3rd Edition, May 2011) states that "[I]f the motion is filed prior to the expiration of the period as originally set or previously extended, the motion is a motion to extend, and the moving party need only show good cause for the requested extension." Id.

SI requests the extension of time based upon the unavailability of its witnesses for deposition during the discovery period because they are engaged in preparation for and participation in one of the key trade shows that SI participates in each year. Preparation for this trade show has been ongoing and will continue through the month of February into March, when the trade show occurs.

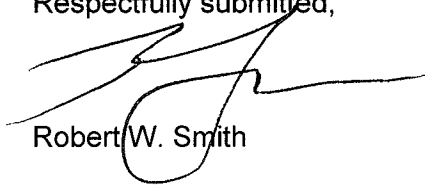
Registrant promptly notified Petitioner's counsel that Registrant's witnesses were unavailable to appear for depositions due to a critical business event and advised of the witnesses' earliest availability. Registrant has not unreasonably delayed. We have not received a response from Petitioner's counsel to our request

February 10, 2012
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for consent to an extension. As a result, we have filed the within motion seeking to extend the discovery and trial dates.

As discussed above, the discovery period is set to close on March 12, 2012. SI respectfully moves this Board for a 60 day extension of the discovery and trial dates.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Robert W. Smith', written over the printed name.

Robert W. Smith

cc: Amy Sullivan Cahill, Esq.